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In re Application of :
GODA, Yoshio et al. :
Application No.: 09/980,880 :
PCT No.: PCT/JP01/01457 : DECISION ON
Int. Filing Date: 27 February 2001 :
Priority Date: 28 February 2000 : PETITION
Attorney Docket No.: MAT-8189US :
For: TOP SEALING PLATE, BATTERY : UNDER 37 CFR 1.181
USING THE TOP SEALING PLATE, :
AND METHOD OF :
MANUFACTURING THE BATTERY :
:

This decision is in response to "Petition For Resetting of Due Date For Response to Lost Notification of Missing Requirements," which has been treated as a petition under 37 CFR 1.181 for the reasons set forth below. No petition fee is due.

BACKGROUND

On 27 February 2001, applicants filed international application PCT/JP01/01457. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 30 August 2001.

On 29 October 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 24 January 2002, the Office mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date were required.

On 03 September 2002, applicants filed the instant petition accompanied by the docket records for the instant application.

DISCUSSION

The showing required to establish nonreceipt of an Office communication is set forth in the notice entitled *Withdrawing the Holding of Abandonment When Office Actions Are Not Received*, 1156 O.G. 53 (Nov. 16, 1993). The showing must include: (1) a statement by the

practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Item (1) has been met. Applicants indicate that they had not received the Notification of Missing Requirements

As to (2), practitioner does not state that a search of the file jacket and docket records indicates that the Office action was not received.

As to (3), practitioner must provide a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed and reference the docket record in the practitioner's statement. "For example, if a three month period for reply was set in the nonreceived Office Action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action." MPEP §711.03(c) para. II. The printout of the docket records for this application is not sufficient.

The declaration that accompanied this petition satisfies the requirements of 37 CFR 1.497(a)-(b).

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." No additional petition fee is required.

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.


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